IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8973 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAMMAD HANIF ALIAS ANUDI HUSENMIYA SHAIKH

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 8973 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Ahmedabad city on 16.6.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was declared as 'bootlegger'.

The grounds served upon the petitioner and placed on record reveal that the detaining authority took into consideration two types of materials in passing the order. Firstly, registration of crimes against the petitioner on 3.3.2003 under sec.66(B), 65(A)(E), 81, 83 and 116(B) of the Bombay Prohibition Act. It is alleged that in the said case, the petitioner was found with foreign liquor worth of Rs. 29,300/-, secondly, the detaining authority relied upon the facts stated by the witness in in-camera statements as recorded by the sponsoring authority on 10.6.2003 and verified by the detaining authority on 13.6.2003 revealing unreported incidents occurred on 15.5.2003 and 27.5.2003. From the above material, the detaining authority passed the order of detention against the petitioner which is impugned in this petition.

Ld. advocate Mr. Kamen Shukla for Mr. AS Dave for the petitioner and ld. AGP Mr. Chauhan for the respondents were heard at length. The affidavit in reply filed by the detaining authority as placed on record, is also taken into consideration.

Out of various grounds raised on behalf of the petitioner and controverted by ld. AGP, from the rival contentions, it appears that this matter can be considered and decided on sole ground whether there is non-application of mind by the detaining authority as to the vital aspect of the matter in passing the order of detention. In this respect, undisputedly, the grounds served upon the petitioner revealing that the petitioner was on police remand when order came to be passed and served upon the petitioner. The detaining authority from this fact came to the conclusion that on police remand period being over, the petitioner was likely to move an application for bail and was likely to be released on bail by the court competent and was likely to continue his illegal activity. Now the question is while reaching to this subjective satisfaction, the detaining authority took into consideration the cogent material or not. On going through the records and grounds placed before this court, it is clear that there is no material at all to reach to the subjective satisfaction that the petitioner was likely to be released on bail. Ld. advocate for the petitioner makes a statement that the petitioner

neither moved bail application till day nor he has been released on bail. The facts of this case are squarely covered by a decision of the Apex court in the matter of Amrutlal and others vs. Union Government, through Secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675. Consequently, the order impugned becomes bad in law because there was no material before the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail. The order impugned, therefore, required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 16.6.2003 by the Police Commissioner, Ahmedabad city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if she is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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